

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MAY 12, 2021

CLERK'S OFFICE  
PUBLIC CONTROL CENTER  
2021 MAY 12 P 2:00

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00089

*Ex Parte:* In the matter of establishing rules  
and regulations pursuant to § 56-585.5 G  
of the Code of Virginia related to  
accelerated renewable energy buyers

ORDER ESTABLISHING PROCEEDING

During its 2020 Session, the Virginia General Assembly enacted the Virginia Clean Economy Act ("VCEA").<sup>1</sup> Among other things, the VCEA, in Code § 56-585.5 G, permits certain customers of Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to be certified as accelerated renewable energy buyers ("ARBs"). The VCEA defines an ARB to mean "a commercial or industrial customer of a Phase I or Phase II Utility, irrespective of generation supplier, with an aggregate load over 25 megawatts in the prior calendar year, that enters into arrangements pursuant to subsection G, as certified by the Commission."<sup>2</sup> As amended by legislation passed by the Virginia General Assembly in the 2021 Session,<sup>3</sup> effective July 1, 2021, Code § 56-585.5 G will provide as follows:<sup>4</sup>

G. 1. An accelerated renewable energy buyer may contract with a Phase I or Phase II Utility, or a person other than a Phase I or Phase II Utility, to obtain (i) RECs from RPS eligible resources or (ii) bundled capacity, energy, and RECs from solar or wind generation resources located within the PJM region and initially

<sup>1</sup> Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

<sup>2</sup> APCo is a Phase I Utility, and Dominion is a Phase II Utility. See Code § 56-585.1 A 1.

<sup>3</sup> House Bill 1907, 2021 Va. Acts ch. 140.

<sup>4</sup> As used in Code § 56-585.5, the term "RECs" refers to renewable energy certificates, and the term "RPS" refers to a renewable energy portfolio standard.

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placed in commercial operation after January 1, 2015, including any contract with a utility for such generation resources that does not allocate to or recover from any other customer of the utility the cost of such resources. Such an accelerated renewable energy buyer may offset all or a portion of its electric load for purposes of RPS compliance through such arrangements. An accelerated renewable energy buyer shall be exempt from the assignment of non-bypassable RPS compliance costs pursuant to subsection F, with the exception of the costs of an offshore wind generating facility pursuant to § 56-585.1:11, based on the amount of RECs obtained pursuant to this subsection in proportion to the customer's total electric energy consumption, on an annual basis. An accelerated renewable energy buyer obtaining RECs only shall not be exempt from costs related to procurement of new solar or onshore wind generation capacity, energy, or environmental attributes, or energy storage facilities, by the utility pursuant to subsections D and E, however, an accelerated renewable energy buyer that is a customer of a Phase II Utility and was subscribed, as of March 1, 2020, to a voluntary companion experimental tariff offering of the utility for the purchase of renewable attributes from renewable energy facilities that requires a renewable facilities agreement and the purchase of a minimum of 2,000 renewable attributes annually, shall be exempt from allocation of the net costs related to procurement of new solar or onshore wind generation capacity, energy, or environmental attributes, or energy storage facilities, by the utility pursuant to subsections D and E, based on the amount of RECs associated with the customer's renewable facilities agreements associated with such tariff offering as of that date in proportion to the customer's total electric energy consumption, on an annual basis. To the extent that an accelerated renewable energy buyer contracts for the capacity of new solar or wind generation resources pursuant to this subsection, the aggregate amount of such nameplate capacity shall be offset from the utility's procurement requirements pursuant to subsection D. All RECs associated with contracts entered into by an accelerated renewable energy buyer with the utility, or a person other than the utility, for an RPS Program shall not be credited to the utility's compliance with its RPS requirements, and the calculation of the utility's RPS Program requirements shall not include the electric load covered by customers certified as accelerated renewable energy buyers.

2. Each Phase I or Phase II Utility shall certify, and verify as necessary, to the Commission that the accelerated renewable energy buyer has satisfied the exemption requirements of this subsection for each year, or an accelerated renewable energy buyer

may choose to certify satisfaction of this exemption by reporting to the Commission individually. The Commission may promulgate such rules and regulations as may be necessary to implement the provisions of this subsection.

3. Provided that no incremental costs associated with any contract between a Phase I or Phase II Utility and an accelerated renewable energy buyer is allocated to or recovered from any other customer of the utility, any such contract with an accelerated renewable energy buyer that is a jurisdictional customer of the utility shall not be deemed a special rate or contract requiring Commission approval pursuant to § 56-235.2.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this docket should be established for the purpose of determining whether rules and regulations are necessary to implement the provisions of Code § 56-585.5 G and, if so, the appropriate rules and regulations that should be adopted. We first seek comment on several questions raised by Code § 56-585.5 G. We will direct APCo and Dominion to submit comments, and the Commission will permit any other interested person or entity to submit comments, regarding the issues identified below. In addition to answering these specific questions, commenters also may propose specific regulations.

#### Issues Identified for Comment

1. What processes do APCo and Dominion propose to "certify, and verify as necessary, to the Commission that the accelerated renewable energy buyer has satisfied the exemption requirements of [Code § 56-585.5 G]"? What analysis will APCo and Dominion use to confirm whether an ARB has met the requirements of Code § 56-585.5 G? Has Dominion or APCo previously certified any ARBs?
2. Administratively, how do APCo and Dominion plan to track ARBs, including which ARBs are exempt from which riders? Are regulations needed to address related procedures?
3. What internal dispute resolution process will APCo and Dominion use to resolve disputes with prospective ARBs related to the certification requirements of Code § 56-585.5 G? Are regulations needed to address how a prospective ARB may challenge before the Commission a certification decision by Dominion or APCo?

4. Should the Commission approve procedures by which an ARB "may choose to certify satisfaction of this exemption by reporting to the Commission individually," and, if so, what procedures should be adopted? Should such procedures include notice and an opportunity for input from such ARB's incumbent electric provider (*i.e.*, APCo or Dominion)?
5. Are contracts entered into by ARBs under Code § 56-585.5 G 1 (ii) for "bundled capacity, energy, and RECs" retail or wholesale power contracts? If applicable, will these contracts be ring-fenced arrangements?
6. Are non-jurisdictional customers of APCo and Dominion eligible to be certified as ARBs? If so, does the Commission have jurisdiction to certify a non-jurisdictional customer as an ARB or to resolve disputes involving non-jurisdictional customers?
7. Given the statutory definition of "aggregate load" under Code § 56-585.5 A, are there issues concerning whether a customer has an "aggregate load over 25 megawatts in the prior calendar year" that should be addressed through regulations?
8. Code § 56-585.5 G permits ARBs to enter into contracts with, in addition to Dominion and APCo, "a person other than a Phase I or Phase II Utility." For ARB contracts involving the sale of bundled capacity, energy, and RECs, must such "person" be licensed in Virginia as a competitive service provider? Should a process be included in the regulations addressing how such "person" can obtain customer load information from APCo or Dominion (with the customer's permission) to confirm whether a potential ARB has the requisite load to qualify as an ARB, and if so, what process should be included?
9. Code § 56-585.5 G also provides that "[t]o the extent that an accelerated renewable energy buyer contracts for the capacity of new solar or wind generation resources pursuant to this subsection, the aggregate amount of such nameplate capacity shall be offset from the utility's procurement requirements pursuant to subsection D." It also states that "the calculation of the utility's RPS Program requirements shall not include the electric load covered by customers certified as accelerated renewable energy buyers." Should procedures be included in the regulations addressing how ARBs entering into contracts with persons other than APCo and Dominion should report this information on an annual basis, and if so, what process should be included?
10. Are there additional issues that should be brought to the Commission's attention and addressed through regulations related to ARBs and the implementation of Code § 56-585.5 G?

The Commission takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both

the state and federal levels.<sup>5</sup> The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.<sup>6</sup>

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUR-2021-00089.
- (2) All filings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure.<sup>7</sup> For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.<sup>8</sup>
- (3) APCo and Dominion shall submit comments, on or before June 21, 2021, on the issues identified above.

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<sup>5</sup> See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. This and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

<sup>6</sup> See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

<sup>7</sup> 5 VAC 5-20-10 *et seq.*

<sup>8</sup> As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency. See *supra* n.6.

(4) Any other interested person or entity may submit comments, on or before June 21, 2021, on the issues identified above. Public comments may be submitted electronically by following the instructions available at the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). All comments shall refer to Case No. PUR-2021-00089.

(5) Within five (5) business days of the date of this Order, APCo and Dominion shall transmit to each customer eligible to be certified as an ARB, by separate first class mailing, by electronic mail, or by bill insert, a copy of this Order.

(6) Within ten (10) business days of the date of this Order, APCo and Dominion shall file an affidavit of compliance with the requirement in Ordering Paragraph (5) with the Clerk of the Commission by filing electronically at [scc.virginia.gov/clerk/efiling/](http://scc.virginia.gov/clerk/efiling/). The affidavit shall not include the names or other identifying information of the notified customers, but each utility shall maintain a record of such information.

(7) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to any additional individuals, organizations, and companies who have been identified by the Commission Staff as having interest in this matter.

(8) This case is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.